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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,794	09/05/2001	Gerhardus Sjoerd Jozef Haak	110510	4100

25944 7590 09/09/2004

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EXAMINER

SIEFKE, SAMUEL P

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/914,794		HAAK ET AL.	
	Examiner		Art Unit	
	Samuel P Siefke		1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Restriction requirement 7/23/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 8-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/5/01</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fetner et al. (USPN 5,512,168) in view of Pawliszyn (USPN 5,496,741).

Fetner teaches an extraction process that comprises: conditioning a sorbent in a cartridge by passing a liquid suitable for conditioning through the cartridge (col. 10, lines 26-30; col. 10, lines 49-51); applying a sample that contains the analyte to the sorbent by passing a liquid which contains the sample through the cartridge (col. 10, lines 52-54); washing the sorbent by passing a wash liquid through the cartridge (col. 10, lines 55-59); eluting the analyte from the sorbent by passing an elution liquid through the cartridge (col. 11, lines 1-6). Fetner also teaches drying the cartridge receiver tubes for a selected period of time. The gas comprises a dry inert gas. (col. 6, lines 27-30).

Fetner does not teach any information regarding raising or lowering the temperature of the cartridge.

Pawliszyn teaches a process for increasing analyte concentration in a sorbent. Pawliszyn increases the temperature of the sample and cools the sorbent in order to create a high temperature differential between the sample and the sorbent. As the temperature differential increases, a partition coefficient of the sorbent/sample also increases (abstract; col. 1, lines 48-62). Therefore, it would have been obvious to one having an ordinary skill in the art to modify Fetner to increase the temperature differential between the sample and the sorbent in order to increase the analyte concentration in a sorbent.

Election/Restrictions

Applicant's election with traverse of Group II in the reply filed on 7/23/04 is acknowledged. The traversal is on the ground(s) that as provided in 37 C.F.R. 1.475(b)(1-5), a product and a process that are related to each other will be considered to have unity of invention. Furthermore, the International Preliminary Examining Report has previously established a lack of unity between claims 1-10 on one hand and the remainder of the claims on the other hand. Applicants submit that this provides persuasive authority to withdraw the Restriction Requirement as presently asserted in the Office Action. This is not found persuasive because the International Preliminary Examining Report is only a guideline. If the Examiner finds a further lack of unity then it is deemed proper to apply the lack of unity.

The requirement is still deemed proper and is therefore made FINAL.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P Siefke whose telephone number is 571-272-1262. The examiner can normally be reached on M-F 7:00am-5:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sam P. Siefke



August 27, 2004


Jill Warden
Supervisory Patent Examiner
Technology Center 1700